

Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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CASE AND COMMENT

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A Test.

The proposal to put mail boxes on street cars is meeting with a storm of disapproval and protest from the labor unions. A prominent representative of union labor is quoted to the effect that such unions will never consent to any such measure, the effect of which would be to give the protection of the Federal courts and Federal troops to the running of a private business. What does this mean? The leaders of these bodies have been strong in their repeated denials of sympathy with violence in time of strike. While their good faith has not been free from question, they have in the past for the most part had the discretion to avoid any open advocacy of lawlessness and violence. But the sole ground of objection to the placing of mail boxes on street cars is the consequent barrier of Federal protection against violent obstruction to the operation of the cars. If labor unions dare to take the ground that such Federal protection is hostile to them, they deliberately identify themselves with the riots that are usually incident to strikes. The clearer-headed and wiser leaders of labor must know that such a course is suicidal. They

have too often given a sneaking support and sympathy to the mob that fought for the strike, but they have had the grace to pretend at least that they deprecated violence and crime. If they now fight against mail boxes on street cars, the issue is squarely joined. They come out into the open as avowed inciters of mobs. On such an issue there can be but one verdict. The people of the United States will not tolerate open insurrection by labor unions or any other organization. It is well that the question is raised. It will tend to clear the somewhat turbid condition of the public mind with respect to the relation of labor unions and riots. The right of labor to organize and to seek by all legitimate means for the betterment of labor conditions cannot be denied by any man who has learned the first principles of American liberty. But a free nation will not tolerate organized crime in the interest of any cause, even that of labor.

Privileged Vice.

The progress of civilization by repressing vice does not find its chief obstacle in the so-called vicious classes. That is found in a professedly more respectable class of society which wishes an indulgence in vices that it would prohibit to the lower stratum of society. An increased enlightenment, and finer moral sense, have driven out of the country those public lotteries which used to curse great numbers of the poorer people, and have put upon most of our statute books laws stringent enough to outlaw all forms of gambling. These laws are en-

forced to a considerable extent against the so-called vicious classes. But large numbers of wealthy people contemptuously override them with impunity. At some summer resorts race-track gambling, faro, roulette, and all the varieties of gaming, although condemned by law, become so common that they are taken as a matter of course. These criminal indulgences are not limited to those whom Henry Watterson characterizes as the "Simpering Johnnies and the tough girls," but in them men widely known for wealth or prominence in business or politics often engage on a large scale. It is hard to estimate the degradation and demoralization of a society in which these things thus flourish,—and especially when they are done in open defiance of the law, and permitted by the public officials because of the prominence and "respectability" of the transgressors. Unspeakably contemptible are those public officers who permit these gross violations of law because of the wealth and prominence of the offenders, and limit their enforcement of law to offenders who are ignorant and poor.

A privilege to indulge in the vice of gambling is claimed, also, in the interest of some charitable or quasi-charitable enterprises. Social organizations, and sometimes churches, go into these demoralizing and criminal practices publicly and by wholesale in the name of charity, and even of religion. They spread vice to aid a virtuous cause, and are angry if denied the privilege. Admitting that gambling in saloons or gaming houses is demoralizing, they contend that it is not demoralizing when done by respectable people in the interest of a good cause. There are other vices that might be made to produce a good revenue, which, on this principle, ought to be brought into the service of these organizations. But the worst feature of the matter is the claim of immunity in criminal practices. When well-dressed people in good society claim the right to commit criminal acts in the interest of some charitable or religious enterprise, the acme of absurdity is reached. Yet this is actually done, and pusillanimous officials acquiesce and allow the privilege.

Insurance on Lives of Infants.

A graphic description of the practical na-

ture of insurance on the lives of infants was recently given in a vigorous protest against this pernicious business, by a statement that such a policy amounts to a bet between an insurance company than an infant will live as against the wager by parents or guardians that the child will die, with the chances in favor of those who have it in their own power to win the bet. According to the newspaper reports, there is in at least one great city an appalling amount of this kind of insurance. The subject was recently touched upon in these columns so far as it relates to the right to insure the life of a person without his consent. But in the case of infants there is at least implied authority to effect such insurance under the statutes of some of the states. The authorities on the subject have been reviewed in a recent note to *O'Rourke v. John Hancock Mutual L. Ins. Co. (R. I.) 57 L. R. A. 496*. There seems, however, to be a surprising lack of judicial consideration of the validity of such policies. Where insurance is taken out by other persons on an infant's life the question of the invalidity of the policy on the ground of infancy seems to have been usually a minor consideration, the main question having usually been the interest of the beneficiary in the life insured. If the courts which first had to decide on policies of this kind had gone into the principles of the subject as thoroughly as they should have done, they would have found great difficulty, at least, in holding that insurance on an infant's life in favor of another person could constitute a lawful contract. The inability of an infant to consent to such insurance is a sufficient ground of objection to it. The temptation to create an undue increase in the rate of infant mortality is certainly given by offering to those who have the burden of supporting the child a reward for the child's death. If such policies are to be held valid to any extent, they ought to be limited to the amount actually expended for funeral expenses and burial. Even this is of doubtful right or wisdom, but under the statutes now existing in some of the states, and under the precedents that have been made, with apparent indifference to the most vital and important questions involved, the right to take policies of insurance on the lives of infants can hardly be denied. In this state of things there is strong and pressing need of statutes to make such insurance unlaw-

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used to curse great numbers of the poorer people, and have put upon most of our state books laws stringent enough to outlaw all forms of gambling. These laws are en-

ful. Unlawful they should have been held on general principles, but, since the courts have drifted into at least an implied approval of such policies, the only remedy now is by statutes to declare them unlawful. There ought to be no delay in passing such statutes.



Measure of Damages in Case of Sale of Article That Has no Market Value.

The market value of an article is obviously the standard of damages for breach of a contract to sell it, when there is any such market value. A more difficult question arises when the article for which the contract was made has no market value. An interesting case on this question is that of Huyett-Smith Manufacturing Co. v. Gray, 129 N. C. 438, 57 L. R. A. 198, which holds that the measure of damages for breach of warranty of the capacity of a kiln for drying lumber is not, when there is no kiln of the agreed capacity on the market, the difference between the value of the kiln sold and one of the required capacity, but is the difference between the value of the apparatus delivered and the contract price. An extensive review of the authorities on the subject in a note to this case establishes the following conclusions:

While damages for breach of a contract of sale or purchase are to be measured with reference to the market value of the thing sold whenever that is possible, the absence of a market in which it can be procured or sold does not defeat a recovery for the breach. The party injured is nevertheless entitled to reimbursement for the injury sustained, but the damages are to be measured by some other method.

This method depends upon the character of the thing purchased, the situation of the parties, and the purpose of the purchase, and is affected by all the varying circumstances of the cases in which the question arises.

As a general rule, the total absence of any market in which the article in question could be either bought or sold warrants a recovery for breach of the contract of sale of the difference between the contract price and what it would cost the purchaser to obtain it, though the reasonable value of the article is sometimes adopted as the measure when the cost of production cannot be

accurately ascertained. If there is an available neighboring market, however, or if there was a market at some other not too remote time, that is to be resorted to, making allowance for cost of transportation or delay, in determining the measure of damages.

Where the article is purchased for a special purpose known to the vendor, that purpose will generally control, a purchaser for the purpose of reselling being entitled, on breach by the vendor, to the difference between the contract price and the price to be obtained on the resale; and a purchaser for the purpose of using the article purchased being entitled to the difference between the contract price and what it would cost him to obtain it, or, if he could not obtain it, to the amount of loss suffered by him on the product of such intended use through failure to obtain it.

The vendee, however, must do all he can to avoid or reduce injury by way of trying to procure the thing purchased elsewhere, or to otherwise occupy himself or his machinery, or to procure an available substitute for that which he was to have; and while he is entitled to recover the necessary expense of so doing, he can only recover, in addition thereto, the difference between what he would have made had the article contracted for been supplied and what he was enabled to make without it.

When the breach is by the vendee, the vendor is generally entitled to recover the difference between the contract price and the cost of manufacture or production, where the breach occurred before the preparation of the article; if it occurred afterwards, he is entitled, on surrender of the article, or when it is useless in his hands, to the full contract price.

But he, too, must reduce damages as much as he can; and if a market at a place other than the place of delivery is available, or if he can otherwise dispose of the article sold, he can only recover the difference between the amount for which he could dispose of it and the contract price, together with the cost of transportation.

It would seem that to constitute an absence of market for an article within the meaning of the above rules there must have been an absence of any substantial market where such articles were bought and sold generally. A mere nominal market furnishes no basis for an estimate of damages for a breach of contract.

Temporary Presence in State as Basis of Claim for Extradition.

An attempt to escape from the general rule that mere constructive presence of an offender in the state where a crime is consummated is not sufficient basis for a claim that he be surrendered to the authorities of that state as a fugitive from its justice was made in the recent case of *People ex rel. Corkran v. Hyatt*, 172 N. Y. 176. A person indicted in Tennessee for larceny and false pretenses was demanded by requisition on the governor of New York from the governor of Tennessee. The fact that he was not in Tennessee at the time of the commission of the crime was admitted, as the majority of the court understood the facts, and his mere temporary presence in the state on other business, some days after the crime, was held entirely insufficient to make him a fugitive from justice on departing from the state. It was held to be well established that mere constructive presence would not be sufficient to make him a fugitive from the state, and the only material ground for distinguishing this case from the general current of authorities on this question, found in a note to *State v. Hall* (N. C.) 28 L. R. A. 289, would be the fact that he had gone into the state temporarily, on business entirely disconnected with the crime after the date of its commission. The court said: "If the relator was not otherwise subject to extradition to the state of Tennessee, because he was not personally present in that state at the commission of the alleged offenses, his subsequent presence in the state for a single day, nearly a year before the institution of any prosecution against him, could give that state no right to require his surrender. The question is whether he is a fugitive from justice, not whether the courts of the state of Tennessee have jurisdiction of his alleged offenses. That jurisdiction they have at all times, if at all, provided they secure his person. I am at a loss to imagine how a man's voluntary visit to a state can constitute him a fugitive from the state when he was not such before. I consider it as having exactly the contrary effect. If there be any force in this occurrence, it must be, not in his going into the state, but in his failing to remain there. It is not, however, suggested that he in any respect offended against the laws of Tennessee while present

there. He went there for a specific purpose, and, his business accomplished, immediately left. It is not pretended that his stay was curtailed, or that he left the state on account of any suspicion of a prosecution. Would he have been liable to extradition because on a journey to New Orleans his route passed through the state of Tennessee? Such a result seems to me utterly unreasonable. No distinction can be drawn between the two cases."

A dissenting opinion in this case is based, not on any denial of the doctrines above stated, but on the contention that it did not sufficiently appear that the accused was not in fact in the state of Tennessee when the crime was actually committed, but that it was only shown that he was not there at the precise date on which the crime was alleged to have been committed. But the case was argued and decided by the majority of the court on the theory that the accused was not in the state at the time of the commission of the crime. A query as to the correctness of the doctrine that constructive presence in a state is not sufficient basis for a claim for the surrender of an accused person as a fugitive from the state is raised at the end of the dissenting opinion, with the suggestion that, in view of the prevalence of crimes committed by persons out of the state through the mails, express agencies, or otherwise, this question ought to be determined by the Supreme Court of the United States. Nevertheless, the great uniformity of state and Federal decisions on this question makes it extremely improbable that the Federal court of last resort, if the question ever reaches it, will overturn the well-established rule on this subject.

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Carriers.

Injury to a passenger by reason of the unsafe condition of the depot premises, which the passenger must use to reach his train, is held, in *Herrman v. Great Northern R. Co.* (Wash.) 57 L. R. A. 390, to render the carrier liable, notwithstanding the fact that the premises are used by and are in possession of a union depot company or its receiver, with whom the railroad company contracts for terminal facilities.

A carrier's contract limiting liability for loss to a specified amount is held, in *Rosenthal v. Weir* (N. Y.) 57 L. R. A. 527, to have no application to the damages to be recovered for its failure to comply with a notice of stoppage *in transitu* after it had agreed to do so.

An agreement by a passenger, when procuring a mileage ticket at a reduced rate, not to hold the railway company liable for injuries received while riding on freight trains, is held, in *Richmond v. Southern Pacific Co.* (Or.) 57 L. R. A. 616, to be unenforceable with respect to such freight trains as are designated by the carrier to carry passengers generally.

The voluntary exposure of the body beyond the sides of a moving train, by a passenger riding on the platform, is held, in *Benedict v. Minneapolis & St. L. R. Co.* (Minn.) 57 L. R. A. 639, to be such negligence as will preclude recovery for his death, caused by coming in contact with an iron post near the track.

Conflict of Laws.

The validity of a sale of land by a husband to his wife is held, in *Rush v. Landers* (La.) 57 L. R. A. 353, to be determined by the law of the state where the land is situated.

The contract of a married woman as surety on a note is held, in *Union Nat. Bank v. Chapman* (N. Y.) 57 L. R. A. 513, to be governed by the law of the place where her signature is affixed and the instrument delivered to the payee, although the note is payable in another state, and, as against the makers, has no valid inception until its negotiation in the latter state if the surety has no knowledge that it is to be negotiated there, or intention that her

contract shall be governed by the laws of that state.

Constitutional Law.

A statute rendering telegraph companies liable for mental anguish caused by failure promptly to transmit and deliver a message is held, in *Simmons v. Western U. Teleg. Co.* (S. C.) 57 L. R. A. 607, not to deprive them of property without due process of law, or deny them the equal protection of the laws.

A statute giving the probate judge of one county a salary, and requiring him to account for all fees received, while the judges of all other counties are permitted to retain the fees as their compensation, is held, in *Henderson v. Koenig* (Mo.) 57 L. R. A. 659, to be in violation of a constitutional provision requiring the general assembly, by a law uniform in its operation, to provide for and regulate the fees of all county officers.

A statute imposing a penalty on agents transacting business within the state for foreign partnerships which have not complied with conditions not required of local partnerships is held, in *State v. Cadigan* (Vt.) 57 L. R. A. 666, to be void as discriminating against such agents in favor of those of local firms.

Contracts.

A contract between a sheriff and his deputy, providing that the deputy as such shall collect all the taxes and do all the work of the sheriff's office in one district, and that he shall have all the fees and commissions allowed by law upon the work done by him, and in consideration thereof shall pay the sheriff \$100 a year, is held in *White v. Cook* (W. Va.) 57 L. R. A. 417, to be in violation of the state statutes prohibiting the sale or farming of any office under the laws of the state.

Criminal Law.

Merely exempting a witness in a criminal case from liability to have his testimony used against him in case he is subsequently prosecuted for an offense to which it re-

lates is held, in *Re Carter* (Mo.) 57 L. R. A. 654, not to be sufficient to prevent his claiming the protection of a constitutional provision that no person shall be compelled to testify against himself in any criminal case.

Descent and Distribution.

The vendor's interest in a partially performed contract to purchase land of which the vendee has been put in possession is held, in *Bowen v. Lansing* (Mich.) 57 L. R. A. 643, to pass to his personal representative upon his death, and not to be subject to execution for the debts of his heir.

Druggists.

One who by mistake sells to a person a poisonous drug for a harmless medicine is held, in *Peters v. Jackson* (W. Va.) 57 L. R. A. 428, to be liable to a third person, who without negligence takes the drug for medicine, for damages resulting to him therefrom.

Ejectment.

The title of land sold and deeded by a guardian to her husband is held, in *Frazier v. Jenkins* (Kan.) 57 L. R. A. 575, not to pass to a purchaser who has notice of their relationship; and ejectment for its recovery is held to be maintainable by the ward.

Equity.

In case of a conveyance of property by an aged parent to his son to secure support for himself for the remainder of his life, and the failure of the son to comply with his agreement, rendering impossible of realization the purpose of the grantor, it is held, in *Glocke v. Glocke* (Wis.) 57 L. R. A. 458, that if the grantor elects to rescind the transaction a court of equity will take jurisdiction to give a protective remedy to him by establishing his status as owner of the property.

Evidence.

A presumption of negligence on the part

of an electric company is held, in *Boyd v. Portland General Electric Co.* (Or.) 57 L. R. A. 619, to arise when injury results to a traveler in a public street from one of its live wires, which has broken and is hanging so near the ground as to be within reach therefrom.

Proof that an electric-light wire controlled by a private corporation, and normally suspended upon poles along a public street, was trailing broken on the sidewalk, is held, in *Newark Electric Light & Power Co. v. Ruddy* (N. J. Err. & App.) 57 L. R. A. 624, to afford a presumption of negligence, in a suit against such corporation by a person injured through electric shock by coming in contact with such wire.

From the fact that a quiet, gentle horse was left standing untied in the public street, free from the presence of anything which might frighten or disturb him, it appearing that the driver had been accustomed to use the horse in that way for many years without an accident, it is held, in *Belles v. Kellner* (N. J. Err. & App.) 57 L. R. A. 627, that no inference can arise that the act was negligent.

Fixtures.

Heating apparatus bought by a man under a contract reserving title in the seller, and permanently placed in a building owned by himself and his wife by entirities, is held, in *Schellenberg v. Detroit Heating & Lighting Co.* (Mich.) 57 L. R. A. 632, not to become a fixture so as to prevent its removal for nonpayment of the purchase money, if removal will not materially injure it or the building.

Fright.

One frightening a woman so as to cause nervous prostration, by stealthily entering her home in the night-time and committing a trespass on her husband's property, is held, in *Watson v. Dilts* (Iowa) 57 L. R. A. 559, to be liable to her in damages therefor.

Guaranty.

A written guaranty of the salary and ex-

penses of a detective in working up a murder case is held, in *Blyth v. Pinkerton* (Wyo.) 57 L. R. A. 468, not to continue after conviction of a suspect, and settlement of the bill for services to that time, although the guaranty is not canceled or recalled.

Highways.

The permanent obstruction of a street within 200 feet of the property of an abutting owner, cutting him off from his usual and only direct access to the business portion of the town, thereby depreciating the value of his property, is held, in *O'Brien v. Central Iron & Steel Co. (Ind.)* 57 L. R. A. 508, to inflict special injury on him, for which he may recover damages.

Injunction.

The maintenance of a tower by a land-owner on his land in such a way that ice formed on it, from freezing rain or spray from a cataract, falls on to adjoining property so as to injure it and endanger human life, is held, in *Davis v. Niagara Falls Tower Co. (N. Y.)* 57 L. R. A. 545, to be properly enjoined.

A combination of mercantile dealers to compel another dealing in similar goods to sell at prices fixed by it, or, upon its refusal to do so, to prevent those of whom its members are purchasing customers from selling goods to him, is held, in *Brown & Allen v. Jacobs Pharmacy Co. (Ga.)* 57 L. R. A. 547, to be void; and an injunction is held to be properly granted to restrain the members of such combination from carrying into effect their purpose.

Insurance.

Under a statute requiring insurance commissioners to issue a license to a foreign insurance company to do business in the state, if satisfied with its statement showing its financial condition and standing, it is held, in *Bankers' Life Ins. Co. v. Howland (Vt.)* 57 L. R. A. 374, that the commissioners have no authority to question the method of computing the reserve set forth in the

statement, or to enter upon an independent valuation of such reserve.

The interest of the assured in a twenty-year distribution policy of insurance on his life, which will cease on his failure to pay premiums, is held, in *Boisseau Use of Robinson v. Penn (Va.)* 57 L. R. A. 380, not to be an estate within the meaning of a statute making an execution a lien, from the time it is placed in the hands of the officer, on all the personal estate of or to which the judgment debtor is, or may afterwards and before the return date of the writ become, entitled.

A life insurance agent is held, in *Tomseek v. Travelers' Ins. Co. (Wis.)* 57 L. R. A. 455, to have no implied authority to accept as payment of a premium on a policy an agreement to give him credit upon his individual account, which he shall trade out with the insured in the ordinary course of business.

An infant is held, in *O'Rourke v. John Hancock Mut. L. Ins. Co. (R. I.)* 57 L. R. A. 496, not to be bound by his warranties in a contract for life insurance.

The surrender of an insurance policy to the insurer for its cash value is held, in *Pippen v. Mutual Benefit Life Ins. Co. (N. C.)* 57 L. R. A. 505, not to be a sale which can be disaffirmed by the administrator of the insured, on the ground of the latter's infancy, but to be merely a rescission of the contract.

The loss to be made good under a policy of fire insurance is held, in *Pennsylvania Co. v. Philadelphia Contributionship (Pa.)* 57 L. R. A. 510, not to be limited to the cost of replacing the structure described in the survey, if, when the fire occurs, the statutes require, as a condition of rebuilding, more substantial and expensive structural work.

A policy insuring a railroad company against loss from liability to persons who should accidentally "sustain personal injuries" on defendant's road under circumstances which impose upon the insured a common law or statutory liability for the injuries is held, in *Worcester & S. Street R. Co. v. Travelers' Ins. Co. (Mass.)* 57 L. R. A. 629, not to cover cases of instantaneous death without conscious suffering through injuries for which insured is responsible, where the statutes give a new right of action to the personal representative in case of death, and not a right of action to deceased, which survives.

Intoxicating Liquors.

In case of a conviction of selling intoxicating liquors without a license in violation of a statute forbidding such sale, and providing that the punishment therefor shall be a fine and, at the discretion of the court, imprisonment in the county jail, it is held, in *State v. Gillilan* (W. Va.) 57 L. R. A. 426, that the court has no power, in addition to imposing a fine and costs, to require of the defendant sureties for good behaviour.

Judgment.

For the purpose of determining the proper recipient of a pension due to the widow of a deceased person, it is held, in *Lawrence v. Nelson* (Iowa) 57 L. R. A. 583, that the court will inquire into the validity of a divorce which he had obtained.

Landlord and Tenant.

A tenant is held, in *Wright v. Du Bignon* (Ga.) 57 L. R. A. 669, to have no right to remove fixtures annexed to the freehold, which are placed on leased land, in the absence of a contract giving him the right to do so.

Libel and Slander.

A communication transmitted by a commercial agency, that a certain person had made an assignment for the benefit of creditors, when the information received by it was that he had made an assignment to secure the indorser of a note, is held, in *Douglass v. Daisley* (C. C. A. 1st C.) 57 L. R. A. 475, not to be privileged as matter of law.

Limitation of Actions.

The fact that a mortgage is given to secure payment of an entire sum which is payable in instalments is held, in *George v. Butler* (Wash.) 57 L. R. A. 396, not to prevent the running of the statute of limitations against each instalment as it becomes due.

Master and Servant.

The death of a servant, caused by criminal violence of a mob of strikers, is held, in *Foreman v. Taylor Coal Co.* (Ky.) 57 L. R. A. 447, to impose no liability on the master, under a statute making him liable for death resulting from injuries inflicted by his negligence or wrongful act.

The duty of using a fender provided by the owner of a vessel to aid in docking it is held, in *Kelly v. New Haven Steamboat Co.* (Conn.) 57 L. R. A. 494, not to rest upon him, and he is therefore held not to be liable for injuries to an employee resulting from the neglect of the mate to use it in bringing the vessel into the dock, although the injured employee works under the immediate orders of the mate.

Municipal Corporations.

The carrying of deadly weapons being an offense fully provided for and punished by state law, it is held, in *Judy v. Lashley* (W. Va.) 57 L. R. A. 413, to be beyond the power of a municipal corporation to make it an offense punishable under a city ordinance, unless such power is expressly conveyed by the municipal charter.

Negligence.

Liability for damages to a neighbor, caused by the explosion of a steam boiler, is held, in *Veith v. Hope Salt & Coal Co.* (W. Va.) 57 L. R. A. 410, not to arise where one places the boiler upon his premises, and operates it in a lawful business, with care and skill.

A railroad company is held, in *Edgington v. Burlington, C. R. & N. R. Co.* (Iowa) 57 L. R. A. 561, to be liable to infants of tender years for injuries inflicted by a turn-table maintained by it in an unfenced lot so near a public way as to be likely to attract children to play on it, unless it exercises reasonable care to have it safely fastened.

Principal and Agent.

One purchasing a piano from an agent

is held, in *Baldwin v. Tucker* (Ky.) 57 L. R. A. 451, to be bound to take notice that, unless it is expressly given, the agent has no authority to take a note for the purchase price payable to himself, and that no title can be acquired to the instrument in exchange for such note, unless the transaction is ratified by the principal, or a custom to take such notes is shown.

Railroads.

See NEGLIGENCE.

Robbery.

Grabbing a purse from one's hand so quickly that he has no opportunity to resist is held, in *Jones v. Com.* (Ky.) 57 L. R. A. 432, to involve sufficient force to constitute robbery.

Specific Performance.

In case of an agreement to convey an interest in land to one for services in securing the location of a railroad depot thereon, it is held, in *Reed v. Johnson* (Wash.) 57 L. R. A. 404, that specific performance will not be enforced where the grantee has agreed to divide with certain officials of the road all money received by him from sales of land during the construction of the road.

Street Railways.

The removal, by a street-railway company, of snow from its tracks to the adjacent roadway in such a manner as to leave a deep ditch and render the street unsafe and dangerous for public travel, is held, in *Gerrard v. LaCrosse City Ry. Co.* (Wis.) 57 L. R. A. 465, to render the company liable for injuries to travelers caused thereby.

Taxes.

The privileges and immunities of citizens of other states are held, in *State v. Travelers' Ins. Co.* (Conn.) 57 L. R. A. 481, not to be violated by a statute taxing the resident

stockholders of certain corporations in the town in which they reside, deducting from the market value of the stock the value of the capital invested in real estate on which the company pays taxes, but imposing a state tax on nonresident shareholders on the market value of their shares, without any provision for deduction of capital invested in real estate.

A tax on all remainders or reversions which vested prior to a certain date, or which shall not come into possession until after the passage of the act, even if it can be regarded as a tax on property, and not on transfers, is held, in *Re Pell* (N. Y.) 57 L. R. A. 540, to be invalid as not bearing equally upon the entire class to which the property belongs.

The renting of a church parsonage, and using the rent to procure another residence for the parson, are held, in *Protestant Episcopal Church v. Prioleau* (S. C.) 57 L. R. A. 606, not to deprive it of its exemption from taxation, under a provision that exemption of parsonages shall not extend beyond the buildings and premises actually occupied as such.

Telegrams.

See also CONSTITUTIONAL LAW.

Damages for mental anguish caused by breach by a telegraph company of its contract to transmit money promptly are held, in *Robinson v. Western U. Teleg. Co.* (Ky.) 57 L. R. A. 611, not to be recoverable.

A telegraph company is held, in *Commonwealth v. Western U. Teleg. Co.* (Ky.) 57 L. R. A. 614, not to be guilty of maintaining a common nuisance because it delivers, at a place not under its control, which is used and resorted to for selling pools and betting on horse races, to the common nuisance and annoyance of all good citizens in the neighborhood, messages containing the information necessary to such transactions.

Trusts.

An equitable life estate created by a wife in favor of her husband, which shall be free from the debts of the beneficiary, is held, in *Hutchinson v. Maxwell* (Va.) 57 L. R.

A. 384, to be void where the statute provides that estates of every kind, holden or possessed in trust, shall be subject to debts and charges of the persons for whose benefit they are holden, as they would be if those persons owned the like interest in the things holden or possessed, as in the uses or trusts thereof.

Wills.

The widow of a beneficiary is held, in *Re Devoe* (N. Y.) 57 L. R. A. 536, not to be entitled to share under a will directing that, in case of the death of a beneficiary before the time for distribution arrives, his share shall be paid over to his next of kin as, according to the statute of distributions, his personal estate would be divided and distributed.

New Books.

"A Lawyer's Idle Hours." Sentiment, Satire, Humor, Life, Death, Glory. A Half Century under the *Nom de Plume* of Frank Myrtle. Published by the Author, C. Augustus Haviland, 982 Fulton St., Brooklyn, N. Y. Cloth, \$1. Paper, \$.50.

A wide variety of verses, serious and humorous, are found in this little volume. Written at various times through many years, they touch many phases of life, some with tenderness and some with satire, and some with a simple religious faith.

"The General Principles of the Law of Contract." By Louis L. Hammon. St. Paul, Minn. (Keefe-Davidson Co. 1902.) 1 Vol. \$4.25.

As its name implies, this book is a treatise on the general principles of the subject. Though the volume is a large one of more than 950 pages of text, it is very compact. A marked feature of the work is the use of black-lettered text to state elementary principles and their more important applications. The type distinguishing these from the main body of the text makes them prominent. The result is that a very clear outline of the law of contracts is furnished by these black-letter portions of the book.

"Medical Jurisprudence and Toxicology." By John J. Reese, M. D. 6th Ed. Revised by Henry Leffmann, A. M., M. D., Professor

of Chemistry and Toxicology, etc., etc. Philadelphia, Pa. (P. Blakiston's Son & Co. 1902.)—1 Vol. Cloth, \$3.

This well-known work on toxicology has been much developed in the present edition. The numerous editions that this book has reached is sufficient guaranty of its excellence.

"Snyder's Law of Mines and Mining Claims." (T. H. Flood & Co., Chicago, Ill.) 2 Vols. \$12.

"Reinhard on Agency." (The Bowen-Merrill Co., Indianapolis, Ind.) 1 Vol. \$4.50.

"Index-Digest of Virginia Reports." Covering Vols. 92-99. By Thomas Johnson Michie. (The Michie Co., Charlottesville, Va.) 1 Vol. \$4.

"Compiled Statutes of the United States, 1901." (West Publishing Co., St. Paul, Minn.) 3 Vols. \$18.

"Texas Corporation Laws." By Hon. R. L. Bates. (The Gilbert Book Co., St. Louis, Mo.) 1 Vol. \$6.

"Hyde's West Virginia Digest." (The W. H. Anderson Co., Cincinnati, Ohio.) Vol. 1. \$10.

"Stearns on Suretyship." (The W. H. Anderson Co.) 1 Vol. \$6.

"California Digest." Vol. 6 (126-136 Cal. Rep.) (Bancroft-Whitney Co., San Francisco, Cal.) \$5.

"Bellinger's & Cotton's Code of Oregon." (Bancroft-Whitney Co.) 2 Vols. \$13.

"Rose's Notes on Texas Reports." (Bancroft-Whitney Co.) Vol. 5. \$7.50.

"Moody's Manual of Corporation Securities." (John Moody & Co., New York.) 1 Vol. \$7.50.

"Tiffany on Real Property." (Keefe-Davidson Co., St. Paul, Minn.) 2 Vols. \$12.

"Fletcher's Equity Pleading and Practice." (Keefe-Davidson Co.) 1 Vol. \$5.

"Judson on Taxation." (F. H. Thomas Law Book Co., St. Louis, Mo.) 1 Vol. \$6.30.

Recent Articles in Law Journals and Reviews.

"The Relation of the Federal and State Judiciary to Each Other."—1 Michigan Law Review, 169.

"The Law of Dramatic Copyright." II.—1 Michigan Law Review, 179.

"Physical Examination in Personal In-

jury Cases."—I.—1 Michigan Law Review, 193.

"Criminal Responsibility and Punishment for Suicide."—55 Central Law Journal, 361.

"The Correct Doctrine of Stare Decisis."—55 Central Law Journal, 362.

"Municipal Contracts and the Regulation of Rates."—16 Harvard Law Review, 1.

"Legitimacy and Marriage."—16 Harvard Law Review, 22.

"Contracts for the Benefit of a Third Person in the Civil Law."—16 Harvard Law Review, 43.

"Cause of the Coal War."—42 Legal Adviser, 176.

"The Negotiable Instruments Law: A Course of Study."—19 Banking Law Journal, 673, 745.

"Protest of the Bank's Paper by a Notary Stockholder."—19 Banking Law Journal, 688.

"Papinian, Greatest of Roman Lawyers."—6 Law Notes, 143.

"The Negotiable Instruments Law."—41 American Law Register, 561.

"The Law and Distribution of Surplus of Life Insurance Companies."—7 Assurance, 138.

"The Admissibility of X-Ray Photographs in Evidence."—55 Central Law Journal, 401.

"Flight in Criminal and Civil Suits."—55 Central Law Journal, 405.

"When Should Alimony Pendente Lite be Allowed?"—55 Central Law Journal, 383.

"The Coal Mines and the Law."—14 Green Bag, 514.

"Consideration in the English Law of Contract."—28 Law Magazine and Review, 25.

"The Progress of Prison Reform."—28 Law Magazine and Review, 32.

"Reversal of Judgment: Interest on Money Ordered to be Repaid."—28 Law Magazine and Review, 48.

"The Criminal Responsibility of the Insane."—28 Law Magazine and Review, 66.

"Powers of Attorney."—114 Law Times, 3.

"Right of a Person Legally or Illegally Imprisoned and Hired out as a Convict to Recover Compensation for His Services or Damages for Personal Injuries Received in the Course of His Employment."—55 Central Law Journal, 441.

"Right to Dividends as between Life Ten-

ant and Remainderman."—55 Central Law Journal, 444.

"A Statement of the Trust Problem."—16 Harvard Law Review, 79.

"A Problem in Mining Law: Walrath v. Champion Mining Company."—16 Harvard Law Review, 94.

"The Sources of International Law."—2 Columbia Law Review, 511.

"Ship Subsidies and Sugar Bounty Statutes: Their Constitutionality."—2 Columbia Law Review, 525.

"Control of the Trusts."—25 National Corporation Reporter, 418.

"Revocation of Will by Marriage where Statute has Conferred Testamentary Capacity."—10 American Lawyer, 434.

"The Exemption from Liability Stipulation Contained in Railroad Passes."—10 American Lawyer, 435.

"The Origin of Municipal Incorporation in England and the United States."—10 American Lawyer, 444.

"Underground Conduits for Electrical or Other Purposes as Constituting Additional Servitudes upon a Street or Highway."—55 Central Law Journal, 421.

"Contracts of Compromise and Arbitration of Claims by and against Municipal and Other Public Corporations."—55 Central Law Journal, 425.

The Humorous Side.

A PUZZLED JUSTICE.—The following letter is from a recently elected justice of the peace to another justice of experience:

"H——, Texas, Dec. 4, 1902.
Friend S——,

"Please write under what statute to bring a suit for damages where there is a contract for money rent to cultivate land only and the renter uses the field to pasture stock for third parties for a consideration, against the consent of the owner of the land. Is it a suit on the contract or in trespass to try title? Also the law governing the ejectment of a tenant when time is up.

"Yours friend,

"P.—D.—

"P. S. When I refer to the statutes I find so blamed much law I get puzzled.

P.—D.—

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